

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000001-001 DT

05/21/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
K. Waldner
Deputy

STATE OF ARIZONA

PATRICIA A TRACEY

v.

PING JIANG

ROBERT ARENTZ

MESA MUNICIPAL COURT - COURT
ADMINISTRATOR
MESA MUNICIPAL COURT -
PRESIDING JUDGE
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case Number 2010-061019.

Defendant-Appellant Ping Jiang (Defendant) was convicted in Mesa Municipal Court of prostitution and various city code violations. Defendant contends the trial court erred in denying her motion for judgment of acquittal, and erred in denying her request for a jury trial. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On August 12, 2010, the State filed a Complaint charging Defendant with prostitution, A.R.S. § 13-3214(A); and four city code violations. Prior to trial, Defendant filed a request for a jury trial contending a conviction would impose on her additional severe and direct statutory consequences: (1) she could be deported pursuant to U.S.C. § 1182(a)(2)(D) and (2) she could lose her State Massage Therapy License under A.R.S. § 32-4253. On April 7, 2011, the trial court denied Defendant's motion. (R.T. of Apr. 11, 2011, at 1-2.)

Michael Jones testified he came into contact with police officers on July 12, 2010, at about 7:00 p.m. while he was in the Spring Rain Spa. (R.T. of Apr. 11, 2011, at 2-3.) He told the officers he had previously been in that establishment on May 24, 2010, and spoke to Defendant. (*Id.* at 3-4, 10-11.) He paid her \$60.00 and she gave him a massage. (*Id.* at 4-5.) After Defendant finished the massage, she asked him what else he wanted, and he gave a hand gesture indicating he wanted a hand job and oral sex. (*Id.* at 5-7, 14.) Prior to Defendant's providing the services, Mr. Jones placed \$100.00 on the table, which was in addition to the \$60.00 he had already paid her. (*Id.* at 7-8, 15-16, 17, 18.)

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Detective Nate Boulter testified about his investigation at the Spring Rain Spa on July 12, 2010. (R.T. of Apr. 11, 2011, at 22–28.) After that testimony, the State rested and Defendant’s attorney made a motion for judgment of acquittal. (*Id.* at 32–33.) After hearing the State’s response, the trial court denied that motion. (*Id.* at 35.) Defendant then rested. (*Id.*) After hearing arguments from counsel, the trial court found Defendant guilty of prostitution and guilty of three of the four city code violations. (*Id.* at 37–38.) The trial court then imposed sentence. (*Id.* at 38–42.) On April 18, 2011, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUES.

A. *Did the trial court abuse its discretion in denying Defendant’s motion for judgment of acquittal.*

Defendant contends the trial court abused its discretion in denying her motion for judgment of acquittal. The Arizona Supreme Court has given the following tests for review of a motion for judgment of acquittal:

On all such motions, “the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” “Substantial evidence,” Rule 20’s lynchpin phrase, “is such proof that ‘reasonable persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt beyond a reasonable doubt.’” Both direct and circumstantial evidence should be considered in determining whether substantial evidence supports a conviction.

State v. West, 226 Ariz. 559, 250 P.3d 1188, ¶ 16 (2011) (emphasis original; citations omitted).

A judgment of acquittal under Rule 20 is appropriate only where there is “no substantial evidence to warrant a conviction.” “Substantial evidence is more than a mere scintilla and is such proof that ‘reasonable persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt beyond a reasonable doubt.’” Evidence may be direct or circumstantial, but if reasonable minds can differ on inferences to be drawn therefrom, the case must be submitted to the jury. A trial judge has no discretion to enter a judgment of acquittal in such a situation.

State v. Landrigan, 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993) (citations omitted).

In the present case, Michael Jones testified Defendant asked him what he wanted; he told her he wanted a hand job and oral sex; they agreed on a price of \$100.00; he placed the money on the table; and Defendant committed the sex acts on him. Based on that testimony, the trial court did not abuse its discretion in denying Defendant’s motion for judgment of acquittal.

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Defendant contends, however, Mr. Jones was not a credible witness. In addressing the role of an appellate court in reviewing conflicting evidence and testimony, the Arizona Supreme Court has said the following:

Something is discretionary because it is based on an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge, who has a more immediate grasp of all the facts of the case, an opportunity to see the parties, lawyers and witnesses, and who can better assess the impact of what occurs before him. Where a decision is made on that basis, it is truly discretionary and we will not substitute our judgment for that of the trial judge; we will not second-guess. Where, however, the facts or inferences from them are not in dispute and where there are few or no conflicting procedural, factual or equitable considerations, the resolution of the question is one of law or logic. Then it is our final responsibility to determine law and policy and it becomes our duty to “look over the shoulder” of the trial judge and, if appropriate, substitute our judgment for his or hers.

State v. Chapple, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983) (citation omitted). Because this issue involves “an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge” rather than a “question . . . of law or logic,” it is not appropriate for this Court to “substitute [its] judgment for that of the trial judge.”

B. Did the trial court err in denying Defendant’s request for a jury trial.

Defendant contends the trial court erred in denying her request for a jury trial because she would face severe and direct consequences from a conviction in that (1) she could be deported and (2) she could lose her State Massage Therapy License. If a defendant faces punishment of 6 months or less, the defendant is not entitled to a jury trial unless the defendant shows the conviction will result in additional severe direct consequences. *Derendal v. Griffith*, 209 Ariz. 416, 104 P.3d 147, ¶¶ 13–26, 36–37, 40 (2005).

There are, however, two qualifications for these severe direct consequences. First, the punishment must arise from Arizona statutory law. *Derendal* at ¶ 23; *accord*, *State ex rel. McDougall v. Strohson (Cantrell)*, 190 Ariz. 120, 125, 945 P.2d 1251, 1256 (1997) (“[W]e do not consider the risk of deportation in determining whether the defendant is entitled to a jury trial on the state charge.”). In the present case, assuming Defendant could be deported as a result of a conviction for prostitution, that consequence would be a result from federal law and not from Arizona statutory law, and thus would not entitle Defendant to a jury trial.

Second, the punishment must apply uniformly to all persons convicted of that offense. *Derendal* at ¶ 25. *Buccellato v. Morgan*, 220 Ariz. 120, 203 P.3d 1180, ¶¶ 17–20 (Ct. App. 2008) (defendant was charged with city code provisions; defendant claimed additional penalty was that,

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if he had three convictions, city could revoke his business license; court concluded that, because revocation of license applied only to those convicted of three or more offense, this consequence did not apply uniformly to all those convicted); *State v. Willis*, 218 Ariz. 8, 178 P.3d 480, ¶ 17 (Ct. App. 2008) (defendant was convicted of first-degree criminal trespass, which is domestic violence offense; although this meant defendant would be subject to minimum of 4 months incarceration in event of two future domestic violence convictions, that potential punishment would not affect equally all persons convicted of domestic violence offenses, thus this potential punishment would not entitle defendant to jury trial). In the present case, loss of a Massage Therapy License would apply only to those who have a therapy license, thus it would not apply universally to all those convicted of prostitution. The trial court therefore correctly denied Defendant's request for a jury trial.

III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court properly denied Defendant's request for a jury trial, and properly denied Defendant's motion for judgment of acquittal.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Mesa Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Mesa Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen

THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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